

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TWIN CITY SIGN SERVICE AND ITS ALTER
EGO SIGN SERVICES

and

Case 17--CA--14920

SIGN & PICTORIAL PAINTERS LOCAL UNION
NO. 820 AFFILIATED WITH INTERNATIONAL
BROTHERHOOD OF PAINTERS & ALLIED TRADES

DECISION AND ORDER

By Members Cracraft, Devaney, and Oviatt

Upon a charge filed by the Union March 22, 1990,¹ and an amended charge filed September 10, the General Counsel of the National Labor Relations Board issued a complaint on September 24 against Twin City Sign Service and its alleged alter ego Sign Services, the Respondents, alleging that the Respondents violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondents failed to file an answer to the complaint.

On October 22, 1990, the General Counsel filed a Motion for Summary Judgment, with exhibits attached. On October 25, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore uncontroverted.

¹ All dates are in 1990 unless otherwise stated.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from the service of the complaint, unless good cause is shown. The complaint states that an answer to the complaint is due ''within 14 days from the service thereof, and that, unless each Respondent does so, all of the allegations applicable to it in the Complaint shall be deemed to be admitted to be true and shall be so found by the Board.'' The attachments to the Motion for Summary Judgment show that service of the original charge was attempted by certified mail on Respondent Twin City and that service of the amended charge and the complaint were attempted by certified mail on Respondent Twin City and Respondent Sign Services but all these documents were returned by the postal service to the Regional Office marked ''unclaimed.'' ²

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

At all times material, the Respondent Twin City, a corporation with offices and places of business in Kansas City, Missouri, and Shawnee, Kansas, has been engaged in the manufacture, fabrication, installation, and servicing of signs and related items. At all times material, the Respondent Twin City,

² We note that the Respondents' refusal or failure to claim certified mail does not serve to defeat the purposes of the Act. Michigan Expediting Service, 282 NLRB 210 fn. 6 (1986).

in the course and conduct of its business operations, inter alia, sold and shipped from its Kansas City, Missouri facility products, goods, and materials and provided services valued in excess of \$50,000 directly to points outside the State of Missouri. We find Respondent Twin City is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

At all times material, the Respondent Sign Services, a business entity with an office and place of business in Shawnee, Kansas, has been engaged in the manufacture, fabrication, installation, and servicing of signs and related items. At all times material, the Respondent Sign Services, in the course and conduct of its business operations, inter alia, sold and shipped from its Shawnee, Kansas facility products, goods, and materials and provided services valued in excess of \$50,000 directly to points outside the State of Kansas. We find Respondent Sign Services is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

At all times material, Respondent Twin City and Respondent Sign Services have been affiliated business enterprises with common ownership, management, and supervision, have formulated and administered a common labor policy affecting their employees; and have shared common premises, facilities, equipment, employees, and telephones; have provided services for each other; have provided common services; and both have held themselves out publicly as a single integrated business enterprise. Since about September 22, 1989, Respondent Sign Services has been established and operated as a subordinated instrument to and a disguised continuation of Respondent Twin City. Therefore, we find that Respondent Twin City and Respondent Sign Services are alter egos and a single employer within the meaning of the Act.

We further find that the Union is a labor organization with the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

The following employees of the Respondents constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees who are employed by Respondents in any capacity over which the Union has been granted jurisdiction which includes all full-time and regular part-time journeymen sign servicemen, journeyman, sign hanger, and general helper, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

Since about March 23, 1987, the Union has been the designated exclusive collective-bargaining representative of the above unit and has been recognized as the representative by Respondent Twin City. Recognition has been embodied in successive contracts the most recent of which is effective from March 1, 1989, through February 28, 1992.

Since about September 22, 1989, Respondents have repudiated and refused to adhere to and abide by the terms and conditions of employment of the unit set forth in the collective-bargaining agreement with the Union by (1) failing to recognize the Union as the collective-bargaining representative of the employees in the unit, (2) failing to pay the contractual wage rates, and (3) failing to make payments into the Union's health and welfare fund and retirement fund. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects of bargaining. The Respondent engaged in the acts and conduct described above without prior notice to the Union and without agreement of the Union as the exclusive representative of the employees of the Respondents in the unit. We find that by these acts the Respondents have failed and refused, and are failing and refusing, to bargain collectively and in good faith with the Union, and the Respondents thereby have engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the Act.

Conclusions of Law

By repudiating and refusing to adhere to and abide by the terms and conditions of employment of the unit set forth in the collective-bargaining agreement with the Union by (1) failing to recognize the Union as the collective-bargaining representative of the employees in the unit, 2) failing to pay the contractual wage rates, and 3) failing to make payments into the Union's health and welfare fund and the retirement fund, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to affectuate the policies of the Act.

We shall order the Respondents to adhere to and abide by the contractual terms and conditions of employment of the employees in the unit; recognize the Union as the collective-bargaining representative of the employees in the unit; make whole by pay the contractual wage rates ³ and by making payments into the Union's health and welfare fund and retirement fund.⁴

³ We shall order the Respondents to make all affected unit employees whole for any losses they incurred by virtue of the Respondents' failure to pay the contractual wage rates in the manner set forth in Ogle Protection Service, 183 NLRB 682 (1970), with interest on any amounts due paid in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

⁴ We leave to further proceeding the determination of any additional amounts the Respondents must pay into the benefit funds to satisfy our make-whole remedy. See Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979).

We shall also order the Respondents to reimburse unit employees for any expenses ensuing from the failure to make contributions to the various funds established by the collective-bargaining agreement between the Respondents and the Union. Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981).

ORDER

The National Labor Relations Board orders that the Respondents Twin City Sign Service, Kansas City, Missouri, and Sign Services, Shawnee, Kansas, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Repudiating and refusing to adhere to and abide by the terms and conditions of employment of the collective-bargaining agreement with the Union by (1) failing to recognize the Union as the collective-bargaining representative of the employees in the unit; (2) failing to pay the contractual wage rates; and (3) failing to make payments into the Union's health and welfare fund and retirement fund.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Adhere to and abide by the terms of the collective-bargaining contract with the Union by recognizing the Union as the collective-bargaining representative of the employees in the unit, paying the contractual wage rates, and making payments into the Union's health and welfare and retirement fund.

(b) Make whole the employees with respect to wage rates and fund payments in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at their places of business at Kansas City, Missouri, and Shawnee, Kansas, copies of the attached notice marked "'Appendix.'"⁵ Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondents authorized representative, shall be posted by them immediately upon receipt and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

Dated, Washington, D.C. February 19, 1991

Mary Miller Cracraft, Member

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT repudiate and refuse to adhere to and abide by the terms and conditions of employment of the collective-bargaining agreement with the Union by failing to recognize the Union as the collective-bargaining representative of the employees in the unit, by failing to pay the contractual wage rates and by failing to make payments into the Union's health and welfare fund and retirement fund.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL adhere to and abide by the terms of the collective-bargaining agreement with the Union by recognizing the Union as the collective-bargaining representative of the employees in the unit, paying the contractual wage rates, and making payments into the the Union's health and welfare fund and retirement fund.

WE WILL make whole the employees in the unit represented by the Union by paying in the manner set forth by the National Labor Relations Board the contractual wage payments and payments into the Union's health and welfare fund and retirement fund.

TWIN CITY SIGN SERVICE
AND ITS ALTER EGO
SIGN SERVICES

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 5799 Broadmoor, Suite 500, Kansas City, Kansas 66202-2408, Telephone 913--236--2766.